

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

3.392 ACRES OF LAND, MORE OR LESS,
SITUATE IN STARR COUNTY, STATE OF
TEXAS; AND THE UNKNOWN HEIRS OF
JUAN ANTONIO SILVA, ET AL.,

Defendants.

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CASE NO.: 7:20-CV-317

JOINT STATUS REPORT

COME NOW, the United States of America ("Plaintiff") and Eloy Silva, Jr., Richie Silva (aka Richard Eric Silva), John Silva (aka John Anthony Silva), Rodolfo Cantu (aka Rodolfo Cantu, Jr.), Robert Cantu, Richard A. Cantu, Idalia Paula Silva Ruiz, Lila Silva de la Garza (aka Lilia Silva De La Garza), and Araceli Garcia Silva ("Defendants") and file this status report in accordance with the Court's July 22, 2021 Order.¹

PROCEDURAL HISTORY

1. This is a condemnation case for the border fence/infrastructure project involving land in Starr County, Texas.
2. On October 13, 2020, the United States filed the Notice,² Complaint,³ and Declaration of Taking.⁴

¹ Dkt No. 54.

² Dkt No. 3.

³ Dkt No. 1.

⁴ Dkt No. 2.

3. On October 13, 2020, the Court entered an Order setting an initial pretrial and scheduling conference for December 15, 2020.⁵ However, the Court subsequently canceled this initial pretrial conference in its December 11, 2020 order.⁶ The Court ordered the United States to add all known interested parties to this case and provide proof of service of all named Defendants to the Court or provide good cause for its failure to do so by January 4, 2021.
4. On December 2, 2020, request for Summons were filed with the Court.⁷
5. On December 2, 2020, Summons were issued by the Court.⁸
6. On December 4, 2020, the United States filed an Affidavit of Service for Texas Workforce Commission.⁹
7. On December 4, 2020, the United States filed its Joint Discovery/Case Management Plan (JDCMP).¹⁰
8. On December 7, 2020, the United States filed an Affidavit of Service for Lila Silva de la Garza (aka Lilia Silva De La Garza).¹¹
9. On December 7, 2020, the United States filed an Affidavit of Service for Idalia Paula Silva Ruiz.¹²
10. On December 8, 2020, the United States filed an Affidavit of Service for Live Oaks Edinburg, LLC.¹³

⁵ Dkt No. 4.

⁶ Dkt No. 15.

⁷ Dkt No. 7.

⁸ Dkt No. 8.

⁹ Dkt No. 10.

¹⁰ Dkt No. 9.

¹¹ Dkt No. 11.

¹² Dkt No. 12.

¹³ Dkt No. 13.

11. On December 8, 2020, the United States filed an Affidavit of Service for Ameida Salinas, Star County Tax Assessor-Collector.¹⁴
12. On December 14, 2020, the United States filed a Certificate of Commencement of Service by Publication to commence service by publication for Live Oaks Edinburg, LLC, Bruce Simon, Texas Workforce Commission, the Unknown Heirs of Juan Antonio Silva, the Unknown Heirs of Eloy Silva, the Unknown Heirs of Lucila Silva Cantu, the Unknown Heirs of Andres Hinojosa, Lilia Silva de la Garza, and Idalia Paula Silva Ruiz.¹⁵
13. On December 28, 2020, the United States filed its Opposed Motion to Add Party Defendants, Richard A. Cantu, Robert Cantu, Rodolfo Cantu, John Silva (aka John Anthony Silva), Richie Silva (aka Richard Eric Silva), and Eloy Silva Jr.¹⁶
14. On January 4, 2021, the United States filed its First Status Report to provide status of service to the Court¹⁷
15. On January 7, 2021, the Court granted the United States' motion to add Richard A. Cantu, Robert Cantu, Rodolfo Cantu (aka Rodolfo Cantu, Jr.), John Silva (aka John Anthony Silva), Richie Silva (aka Richard Eric Silva), and Eloy Silva Jr. as defendants in this case. Additionally, the Court ordered the parties to appear for an initial pretrial and scheduling conference on March 16, 2021, and to file a joint discovery/case management plan by March 5, 2021. The Court further ordered the United States to provide proof of service on Richard A. Cantu, Robert Cantu, Rodolfo Cantu (aka Rodolfo Cantu, Jr.), John Silva (aka

¹⁴ Dkt No. 14.

¹⁵ Dkt No. 16.

¹⁶ Dkt No. 17.

¹⁷ Dkt No. 18.

John Anthony Silva), Richie Silva (aka Richard Eric Silva), and Eloy Silva, Jr. to the Court or provide good cause for its failure to do so by February 12, 2021.¹⁸

16. On January 15, 2021, the United States filed its request for Summons for the recently added parties.¹⁹

17. On January 15, 2021, the Summons were issued for the recently added parties.²⁰

18. On January 15, 2021, the United States filed its Notice of Filing Amended Schedule G.²¹

19. On January 15, 2021, the United States filed its Certificate of Publication.²²

20. On January 20, 2021, President Joseph R. Biden executed a Presidential Proclamation, terminating the national emergency at the Southern Border Wall and directing a careful review of all resources appropriated or redirected to construct a southern border wall through the development of a plan for the redirection of funds concerning the southern border wall.²³

21. The plan for the redirection of funds concerning the southern border wall was expected to be developed within 60 days from the date of the proclamation and accordingly, Plaintiff's position as to the taking in this case was to be determined upon completion and entry of the referenced Plan for Redirecting Funding and Repurposing Contracts.²⁴

22. On January 21, 2021, the United States filed an Affidavit of Service for Richard A. Cantu.²⁵

¹⁸ Dkt No. 19.

¹⁹ Dkt No. 20.

²⁰ Dkt No. 21.

²¹ Dkt No. 22.

²² Dkt No. 23.

²³ Pres. Proc. No. 10142, 86 Fed. Reg. 7225 (Jan. 20, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/proclamation-termination-of-emergency-with-respect-to-southern-border-of-united-states-and-redirection-of-funds-diverted-to-border-wall-construction/>.

²⁴ *Id.*

²⁵ Dkt No. 24.

23. On February 1, 2021, the United States filed an Affidavit of Service for John Silva (aka John Anthony Silva).²⁶
24. On February 1, 2021, the United States filed an Affidavit of Service for Richie Silva (aka Richard Eric Silva).²⁷
25. On February 1, 2021, the United States filed an Affidavit of Service for Robert Cantu.²⁸
26. On February 3, 2021, the United States filed a Declaration of Not Found for Eloy Silva Jr.²⁹
27. On February 3, 2021, the United States filed a Declaration of Not Found for Rodolfo Cantu (aka Rodolfo Cantu, Jr.).³⁰
28. On February 12, 2021, the United States filed its Second Status Report.³¹
29. On March 4, 2021, the United States filed “Opposed Motion for Continuance of the Joint Discovery/Case Management Plan and the Initial Pretrial and Scheduling Conference Pursuant to Fed. R. Civ. P. 26(f).”³²
30. On March 11, 2021, the United States filed a Certificate of Commencement of Service by Publication to commence service by publication for Eloy Silva Jr. and Rodolfo Cantu (aka Rodolfo Cantu, Jr.).³³
31. On March 29, 2021, the United States filed its Certificate of Publication for Eloy Silva Jr. and Rodolfo Cantu (aka Rodolfo Cantu, Jr.).³⁴

²⁶ Dkt No. 25.

²⁷ Dkt No. 26.

²⁸ Dkt No. 27.

²⁹ Dkt No. 28.

³⁰ Dkt No. 29.

³¹ Dkt No. 30.

³² Dkt No. 32.

³³ Dkt No. 34.

³⁴ Dkt No. 35.

32. Between March 23 and 25, 2021, the United States contacted Richard A. Cantu via telephone calls and emails. Richard A. Cantu indicated that he was representing himself and although not acting as a legal representative, he was the spokesperson for purposes of settlement negotiations for Defendants: Eloy Silva, Jr., Richie Silva (aka Richard Eric Silva), John Silva (aka John Anthony Silva), Rodolfo Cantu (aka Rodolfo Cantu, Jr.), Robert Cantu, Idalia Paula Silva Ruiz, and Lila Silva de la Garza (aka Lilia Silva De La Garza (aka Lilia Silva De La Garza. Richard A. Cantu was updated on the case and settlement negotiations were discussed subject to the final determination of the United States to move forward with construction plans or revestment of the Subject Property. If the Government was not permitted to move forward as initially planned, Richard A. Cantu, on behalf of the Defendants in this case, indicated they were interested in revestment of the interests in the land.

33. The United States served Rodolfo Cantu (aka Rodolfo Cantu, Jr.) and Eloy Silva, Jr., via publication in accordance with Fed. R. Civ. P. 71.1(d)(3)(B), on March 12, 2021, March 19, 2021, and March 26, 2021.³⁵

34. On April 2, 2021, the United States filed its Joint Discovery/Case Management Plan (JDCMP).³⁶

35. On April 2, 2021, the United States filed its Third Status Report.³⁷

36. On April 5, 2021, the United States filed Notice of Disclaimers executed by Bruce M. Simon³⁸ and Live Oak Edinburg, LLC.³⁹

³⁵ *Id.*

³⁶ Dkt No. 37.

³⁷ Dkt No. 36.

³⁸ Dkt No. 38.

³⁹ Dkt No. 39.

37. On April 7, 2021, Assistant United States Attorney, J. Parker Gochenour, was designated as Lead Counsel in this matter in place of Assistant United States Attorney, Manuel Muniz Lorenzi.⁴⁰
38. On April 8, 2021, this Court dismissed Bruce M. Simon and Live Oak Edinburg, LLC, from this case.⁴¹
39. On April 12, 2021, the United States filed a Notice of Disclaimer executed by Texas Workforce Commission.⁴²
40. On May 4, 2021, the United States filed its Unopposed Motion to Dismiss the Unknown Heirs of Andres Hinojosa, Unknown Heirs of Juan Antonio Silva, Unknown Heirs of Lucila Silva Cantu, and Unknown Heirs of Eloy Silva.⁴³
41. On May 10, 2021, the United States filed its Unopposed Motion to Add Party Defendant: Araceli Garcia Silva.⁴⁴
42. On May 11, 2021, the United States filed its Fourth Status Report. In its Status Report, the United States indicated title in the “original” taking had been resolved.⁴⁵
43. On May 13, 2021, the United States filed a Notice of Disclaimer executed by Defendant Starr County Tax Assessor Ameida Salinas.⁴⁶
44. On May 19, 2021, this Court granted the United States’ Motion to Add Party Defendant. Araceli Garcia Silva was added as a party Defendant. At the same time, this Court dismissed the Unknown Heirs of Andres Hinojosa, the Unknown Heirs of Juan Antonio Silva, the Unknown Heirs of Lucila Silva Cantu, and the Unknown Heirs of Eloy Silva.

⁴⁰ Dkt No. 40.

⁴¹ Dkt No. 41.

⁴² Dkt No. 42.

⁴³ Dkt No. 44.

⁴⁴ Dkt No. 45.

⁴⁵ Dkt No. 46.

⁴⁶ Dkt No. 47.

This Court further dismissed Ameida Salinas, Starr County Tax Assessor-Collector and the Texas Workforce Commission.⁴⁷

45. On May 19, 2021, the United States filed a Waiver of Service of Judicial Process, executed by Araceli Garcia Silva.⁴⁸

46. Between June 1 and June 9, 2021, the United States contacted Defendant, Richard A. Cantu, who serves as spokesperson also for Araceli Garcia Silva. Richard A. Cantu indicated, all remaining named party Defendants: Eloy Silva, Jr., Richie Silva (aka Richard Eric Silva), John Silva (aka John Anthony Silva), Rodolfo Cantu (aka Rodolfo Cantu, Jr.), Robert Cantu, Richard A. Cantu, Idalia Paula Silva Ruiz, Lila Silva de la Garza (aka Lilia Silva De La Garza), and Araceli Garcia Silva, would be in favor of a settlement agreement. Specifically, the named party Defendants reached an agreement with the United States “to acquire in fee both the original takings (the 1.939-acre parcel identified as RGV-RGC-1003 and the 1.453 acre parcel RGV-RGC 1005) along with 10.357 remainder acres that are adjacent to and which lie South of the 1.939 (RGC-1003) acre tract and the 5.081 remainder acres that are adjacent to and which lie South of the 1.453 (RGC-1005) tract, for the total sum of \$65,905.00.” It was explained to Defendants that the United States would move forward with the taking and an additional deposit would need to be made into the registry of the Court per the agreement reached.

47. On June 10, 2021, the United States filed its Joint Discovery/Case Management Plan (JDCMP).⁴⁹

⁴⁷ Dkt No. 48.

⁴⁸ Dkt No. 49.

⁴⁹ Dkt No. 51.

48. On June 28, 2021, the United States deposited \$46,314.00 as additional just compensation in this case.⁵⁰

49. On July 9, 2021, Hilda M. Garcia Concepcion filed a Notice of Appearance.⁵¹

50. In accordance with the Court's oral order at the parties' July 20, 2021 status conference, the Court ordered the United States to file a status report by August 17, 2021 unless dismissal documents are filed before that date.⁵²

STATUS UPDATE

51. At the Status Conference on July 9, 2021, the parties advised the Court that they were discussing and working towards agreed upon language in the dismissal documents to be filed in this case. On July 28, 2021, the parties all agreed on the revised language. All parties have been served and both title and just compensation in the "original" taking are resolved between the parties.

52. As part of the settlement and agreement reached between the parties, the United States will be acquiring additional unanticipated acreage from the remainder tract. Currently, because of the settlement between the parties, the United States is obtaining a survey for the substantial additional amount of land in this taking. Both the survey and clear title in the "new" taking will ensure correct property boundaries and owners are included in an Amended Declaration of Taking. Once the survey and the metes and bounds description are acquired, the United States will amend the Declaration of Taking to identify the total acreage to be acquired by the United States from the Defendants. The parties will then file the necessary documents to close the case on this Court's docket. The parties anticipate

⁵⁰ Dkt No. 52.

⁵¹ Dkt No. 53.

⁵² Dkt No. 54.

filing a “Joint Motion for Entry of Order Establishing Just Compensation and Disbursing Funds in Deposit in the Court’s Registry” after the Amended Declaration of Taking is filed.

AGREED TO AS TO FORM AND SUBSTANCE:

FOR DEFENDANTS:

s/ Lilia Silva De La Garza *by permission*
LILIA SILVA DE LA GARZA

s/ Idalia Paula Silva Ruiz *by permission*
IDALIA PAULA SILVA RUIZ

s/ Richard A. Cantu *by permission*
RICHARD A. CANTU

s/ Robert Cantu *by permission*
ROBERT CANTU

s/ Rodolfo Cantu, Jr. *by permission*
RODOLFO CANTU, JR.

s/ John Anthony Silva *by permission*
JOHN ANTHONY SILVA

s/ Eloy Silva, Jr. *by permission*
ELOY SILVA, JR.

s/ Richard Eric Silva *by permission*
RICHARD ERIC SILVA

s/ Araceli Garcia Silva *by permission*
ARACELI GARCIA SILVA

FOR PLAINTIFF:

JENNIFER B. LOWERY
Acting United States Attorney
Southern District of Texas

By: s/ J. Parker Gochenour
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Attorney for the United States of America

CERTIFICATE OF SERVICE

I, J. Parker Gochenour, Assistant United States Attorney for the Southern District of Texas, do hereby certify that on August 16-17, 2021, I mailed a true and correct copy of the foregoing document to all parties for whom the United States has contact information.

By: **s/J. Parker Gochenour**
J. PARKER GOCHENOUR